

**Iowa Department of Natural Resources
Environmental Protection Commission**

ITEM

8

DECISION

TOPIC Final Rule - Chapter 93 - Nonpoint Source Pollution Control Set-Aside Programs

The Commission is requested to approve the attached Final Rule, Chapter 93 “Nonpoint Source Pollution Control Set-Aside Programs.” The changes primarily affect the Livestock Water Quality (LWQ) Facilities program, which, as part of the Clean Water State Revolving Fund, provides low-interest financing to eligible animal feeding operations for manure management structures, equipment, and plans.

A new facility design, which appears to be environmentally beneficial, is the bedded confinement building, or deep-bedded building. Existing rules for the LWQ program did not allow for financing these structures. The new rules will allow financing of these types of roofed facilities under certain conditions.

Other proposed changes include the following items:

- A restating of the purpose of the program to include pollution prevention;
- Updating information about the federal definition of a Concentrated Animal Feeding Operation in both the LWQ and the Local Water Protection Program;
- Clarification of the descriptions of eligible practices;
- Referencing the definition and requirements of manure management plans in 567 Chapter 65;
- Updating the requirements for project approval and removing the option of departmental review of plans and specifications;
- Allowing financing of updates to manure management, nutrient management, or comprehensive nutrient management plans as part of project financing;
- Adding a requirement for recipient record-keeping; and
- Adding language allowing the establishment of loan fees in the Intended Use Plan.

The NOIA was presented to the Commission for information at the April 3, 2007 meeting and for approval at the May 1, 2007 meeting. A public hearing was held June 14, 2007 in Des Moines. No oral comments were provided at the hearing. Written comments are addressed in the attached responsiveness summary.

Patti Cale-Finnegan,
Water Quality Bureau
June 22, 2007

RESPONSIVENESS SUMMARY

Chapter 93 - Nonpoint Source Pollution Control Set-Aside Programs

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 23, 2007 as ARC 5901B. The department sent to SRF stakeholder organizations a notice of the opportunity for public comment through attendance at the public hearing or through submission of written comments. In addition, a news release was sent out statewide. A public hearing was held June 14, 2007. No oral comments were received at the hearing. Five sets of written comments were received. This responsiveness summary outlines the comments and the resulting changes made to the final rules.

Comment	Reference	Department Response
<p>1. Definition of eligible versus ineligible facilities</p> <p>The Note that attempts to clarify which facilities are eligible by referencing federal laws and rules is confusing. The department should state the distinction more clearly. (Mr. Richard Van Klaveren, State Soil Conservationist, Natural Resources Conservation Service)</p>	93.5(1)c., 93.6	The purpose of the language was to establish program eligibility based on the current federal definition, which uses the term “concentrated animal feeding operations” for those facilities that are considered “point” sources and are required to have a National Pollution Discharge Elimination System (NPDES) permit. Only publicly owned point source facilities are eligible for Clean Water SRF assistance. The department agrees that a clarification of the NPDES requirement should be inserted into the rules.
<p>2. Eligible costs for land purchase</p> <p>There seems to be a contradiction in rules regarding purchase of land. (Mr. Richard Van Klaveren, State Soil Conservationist, Natural Resources Conservation Service)</p>	93.5(1)d., 93.7	Purchase of land on which to site a waste facility is eligible, but purchase of land on which to spread wastewater or manure is not eligible. The department agrees that the language should be changed to clarify that distinction.
<p>3. Eligible projects</p> <p>Suggest adding irrigation systems “used for applying liquid wastes to the land,” and removing the word “waste” before irrigation equipment. (Mr. Richard Van Klaveren, State Soil Conservationist, Natural Resources Conservation Service)</p>	93.5(1)d.	The department agrees to make the first change to clarify project eligibility.
<p>4. Manure storage for deep-bedded buildings</p> <p>Stacking or storage facilities are often used in conjunction with a deep-bedded animal confinement building. Rules should allow financing and use of these structures.</p>	93.5(1)d.	The department agrees that manure storage facilities under roof to contain runoff should be eligible for financing. The language in this item will be amended.

(Mr. Richard Van Klaveren, State Soil Conservationist, Natural Resources Conservation Service)		
<p>5. Change wording from “facilities, equipment or planning” to “facilities, equipment and/or technical assistance to be financed.”</p> <p>(Mr. Richard Van Klaveren, State Soil Conservationist, Natural Resources Conservation Service)</p>	93.5(3)	<p>The purpose of the language was to require that the project components to be financed should be included on the application. Eligible projects are facilities, equipment, and preparation of manure management, nutrient management, or comprehensive nutrient management plans. 93.5(6) states that design, permitting, construction, and financing are eligible costs. The language in 93.5(3) will be clarified.</p>
<p>6. Size of facility</p> <p>The size of the building or number of animals per building should be capped to something manageable.</p> <p>(Ms. Stacie Johnson, Cedar Rapids)</p>		<p>Currently federal regulations define 1,000 animal units as the threshold for designation as a concentrated animal feeding operation requiring a National Pollutant Discharge Elimination System permit. Only facilities not required to have this permit are eligible.</p>
<p>7. Soiled bedding</p> <p>There needs to be a plan in place for after the bedding is removed from the building as an integral part of the system and/or the loan agreement.</p> <p>(Ms. Stacie Johnson, Cedar Rapids)</p>		<p>The department agrees that manure storage facilities under roof to contain runoff should be eligible for financing. The language in 93.5(1)d. will be amended.</p>
<p>8. Waste disposal from facilities</p> <p>SRF loan funds address prevention of runoff from facilities, but it is unclear if the DNR is ensuring that no runoff will occur from farm fields where waste is applied. The DNR should ensure that nutrients are incorporated and not surface applied, and only applied when analysis shows fields are in need of additional nutrients. DNR should map all fields in manure management plans using GIS to avoid duplicative applications.</p> <p>(Ms. Linda Kinman, Research/Regulatory Coordinator, Des Moines Water Works)</p>		<p>Applicants must submit a manure management, nutrient management, or comprehensive nutrient management plan in order to be eligible for loan funding. Plans are administratively reviewed for completeness, but not cross-checked against other plans to avoid duplicative use of fields for waste application.</p>
<p>9. Deep bedded barns</p> <p>With the proposed rule change, it</p>		<p>Because federal regulations define cattle operations with 1,000 or more animals as</p>

will make it more viable for small to medium size producers to stay in the business of raising cattle in an environmentally friendly way. (Mr. Harry Wieringa, Ag Loan Officer, American State Bank, Sioux Center)		“point” sources, this non-point source program is available for small to medium sized producers. Financing of deep-bedded buildings will be eligible primarily when they eliminate existing open feedlots.
10. Limitation to existing facilities The rules limit assistance to existing facilities. Beginning producers and any producer building a new bedded confinement building should be eligible. Growth in the cattle industry should be accomplished in an environmentally friendly way. (Eldon McAfee, Iowa Cattlemen’s Association)		The livestock loan program since its inception has been limited to existing facilities. A provision is made for new facilities being constructed to replace existing facilities when a water quality impairment can be addressed or prevented.
11. Definition of deep bedded buildings Terminology in Chapter 93 should match Chapter 65 so that the chapters coincide and there are no questions of interpretation. (Eldon McAfee, Iowa Cattlemen’s Association)	93.5(1)d.	The department agrees that the terminology in the two chapters should match and the language has been changed.

D R A F T

ENVIRONMENTAL PROTECTION COMMISSION [567] Adopted and Filed

Pursuant to the authority of Iowa Code sections 455B.105(11) and 455B.173, the Environmental Protection Commission hereby amends Chapter 93, “Nonpoint Source Pollution Control Set-Aside Programs,” Iowa Administrative Code.

The amendments primarily affect the Livestock Water Quality Facilities program, which, as part of the Clean Water State Revolving Fund, provides low-interest financing to eligible animal feeding operations for manure management structures, equipment, and plans.

A new facility design that appears to be environmentally beneficial is the bedded confinement building, or deep-bedded building. Existing administrative rules for the Livestock Water Quality Facilities program did not allow for financing of these structures. The Department of Natural Resources will allow for financing of these types of roofed facilities under certain conditions, as outlined in the amendments.

In addition, the amendments include the following items:

- Restating the purpose of the program to include pollution prevention;
- Updating information about the federal definition of a Concentrated Animal Feeding Operation in both the Livestock Water Quality Facilities program and the Local Water Protection Projects program;
- Clarifying the descriptions of eligible practices;
- Referencing the requirements for manure management plans found in 567—Chapter 65;
- Updating the requirements for project approval and removing the option of departmental review of plans and specifications;
- Allowing for financing of updates to manure management, nutrient management, or comprehensive nutrient management plans as part of project financing;
- Adding a requirement for recipient record keeping; and
- Adding language allowing for the establishment of loan fees in the Intended Use Plan.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 23, 2007 as ARC 5901B. A public hearing was held June 14, 2007. Written comments were due by June 21, 2007. Changes were made to the rules as a result of comments received:

- Amended the Notes in 93.5(1)c. and 93.6 to clarify that concentrated animal feeding operations required to have a National Pollution Discharge Elimination System permit are not eligible under federal regulations.
- Amended language in 93.5(1)d. to clarify under what conditions the purchase of land is eligible.
- Amended language in 93.5(1)d. to clarify project eligibility.
- Amended language in 93.5(1)d. to include financing for roofed manure storage facilities in conjunction with confinement facilities and to use the same terminology as is used in Chapter 65.
- Amended language in 93.5(3) to clarify that applicants should describe the facilities, equipment, or preparation of manure management, nutrient management, or comprehensive nutrient management plans to be financed.

These amendments are intended to implement Iowa Code sections 17A.3(1)“b,” 455B.105, 455B.291, and 455B.297.

The following amendments are adopted.

ITEM 1. Amend subrule 93.3(2) as follows:

93.3(2) Livestock water quality facilities set-aside. The purpose of the set-aside is to assist owners of existing animal feeding operations to meet state and federal requirements or to prevent, minimize or eliminate water pollution. Projects may be selected using the rating and ranking process in 567—Chapter 91.

ITEM 2. Amend subrule 93.5(1) as follows:

93.5(1) Livestock water quality facilities assistance. Assistance under the CWSRF shall be in the form of low-interest loans made by participating lending institutions or in other manners as specified in an agreement with a pass-through loan recipient. The following eligibility conditions and restrictions for participation apply to such assistance.

a. Location preferences. Livestock water quality facilities located in watersheds with Section 303(d) waters or waters determined to be impaired in the Section 305(b) report will be given a higher priority for funding. See 567—91.9(455B).

b. Eligible project costs. The amount of assistance available shall be limited to the total costs deemed necessary, reasonable and directly related to the facilities required to provide water pollution control as required by the department or to prevent, minimize or eliminate water pollution.

c. Applicant eligibility. Assistance is limited to livestock producers operating animal feeding operations that are eligible to receive assistance from the state revolving fund according to current federal laws and regulations.

NOTE: Current federal laws and rules as of ~~August 2005~~ February 2007 do not allow assistance for concentrated animal feeding operations required to have a National Pollution Discharge Elimination System permit or assistance for animal feeding operations that will become concentrated animal feeding operations required to have a National Pollution Discharge Elimination System permit as a result of the project.

Loans will be made only to livestock producers that are operators of record and have legal control of the property containing the animal feeding operation for the duration of the loan.

d. Project eligibility. The water pollution control facilities considered eligible for assistance include: lagoons; waste treatment facilities and equipment, including but not limited to land ~~used as part of the waste treatment system, on which waste facilities will be constructed;~~ waste storage or holding structures; ~~composters~~ composting facilities and equipment; pipes, pumps, and agitation equipment used to move and manage manure; fencing around lagoons and other waste storage structures; water systems used to flush water in waste treatment systems; irrigation systems used for applying liquid wastes to the land; tank wagons, manure spreaders, tractor blades used for scraping waste and other waste collection and processing equipment (including ~~without limitation~~ tank trucks, loaders, skid loaders, and waste irrigation equipment); ~~recycle pumps,~~ portions of feeding floors and loafing areas used for waste collection and storage; ~~tractor blades used for scraping waste,~~ vegetative filters, filter strips, water and sediment control basins, contour buffer strips, and diversions used to reduce pollution potential from livestock facilities or land disposal areas; fencing and cross fencing along with any associated watering facilities used as part of managed grazing systems; and other similar structures, equipment or water pollution abatement activities as may be found in ~~approved~~ manure management plans that fit the requirements of 567—65.17(459), in nutrient management plans, or in comprehensive nutrient management plans as defined by the USDA Natural Resources Conservation Service, provided that portions of the foregoing (except water systems used for flush water in waste treatment systems and composters) located within a poultry house, milk parlor or hog-confinement facility (such as a ~~slated~~ slatted floor) shall be excluded. Assistance for development of manure management plans, nutrient management plans, and comprehensive nutrient management plans, ~~as defined by the USDA Natural Resource Conservation Service,~~ is eligible. Assistance may be available for the above-mentioned practices when a replacement animal feeding operations which operation will eliminate an

~~existing animal feeding operation that is identified as impacting a Section 303(d) listed stream or is documented as causing or contributing to a water quality impairment or will eliminate a documented pollutant source from a cold water stream or publicly owned lake in order to prevent a potential water quality impairment, mitigate a documented impairment, or eliminate a potential or documented pollutant source from a watershed. Assistance may be available for confinement feeding operation structures, including roofed manure storage facilities, in which manure is stored exclusively in a dry form if:~~

(1) An existing open feedlot operation is completely replaced by confinement feeding operation structures which store manure exclusively in dry form; or

(2) An existing animal feeding operation is expanded by the addition of confinement feeding operation structures which store manure exclusively in dry form, and manure controls meeting the requirements of Chapter 65 are installed or documented for the existing animal feeding operation.

ITEM 3. Amend subrule 93.5(3) as follows:

93.5(3) State review and approval. ~~Prior to receiving assistance, a livestock producer shall submit to the department complete plans and specifications of the facilities to be constructed and a complete list of all waste or nutrient management documents to be developed. The department will review the plans and specifications for compliance with design standards. Once the plans and specifications are determined to meet the design requirements and manure and waste control needs of the animal feeding operation, the department will issue a letter of project approval or construction permit (whichever is applicable) to the livestock producer. Other forms a~~ description of facilities, equipment or preparation or updating of manure management, nutrient management or comprehensive nutrient management plans to be financed and documentation of project approval will be accepted as determined by the department and detailed on the project application.

ITEM 4. Amend subrule 93.5(5) as follows:

93.5(5) Manure management plan required. The livestock producer shall have a manure management plan ~~approved by the department that fits the requirements of 567—65.17(459), a~~ nutrient management plan, or a comprehensive nutrient management plan as defined by the USDA Natural Resources Conservation Service to be eligible for the loan or, as part of the loan,

develop a manure management plan, nutrient management plan or comprehensive nutrient management plan.

ITEM 5. Amend subrule 93.5(6) as follows:

93.5(6) Eligible costs. All costs directly related to the design, permitting, construction and financing of the water pollution control facilities are eligible costs. Costs for development of a manure management plan, nutrient management plan or comprehensive nutrient management plan are eligible costs. Costs for updating a manure management plan, nutrient management plan, or comprehensive nutrient management plan are eligible costs if required for the implementation of a water quality project financed through the livestock water quality facilities program.

ITEM 6. Amend subrule 93.5(7) as follows:

93.5(7) Ineligible costs. Costs for development of new animal feeding operations are not eligible costs. ~~Assistance may be available for replacement animal feeding operations which will eliminate an existing animal feeding operation that is identified as impacting a Section 303(d) listed stream or is documented as causing or contributing to a water quality impairment or will eliminate a documented pollutant source from a cold water stream or publicly owned lake.~~ Costs for water pollution control facilities, including design, permitting, construction or financing, that allow for the animal feeding operation to expand and become a concentrated animal feeding operation are not eligible costs. Costs for the purchase of land to be used for application of wastewater or manure are not eligible costs. Costs for operation and maintenance ~~or updating a comprehensive nutrient management plan~~ are not eligible costs. Refinancing of water pollution control facilities constructed prior to the implementation of this program is not an eligible cost.

ITEM 7. Renumber subrules **93.5(8)** and **93.5(9)** as **93.5(9)** and **93.5(10)** and adopt **new** subrule 93.5(8) as follows:

93.5(8) Recipient record keeping. The loan recipient shall maintain adequate records that document all costs associated with the project. The loan recipient shall agree to provide access to these records to the department, the state auditor, the EPA SRF project manager, and the Office of the Inspector General at the Environmental Protection Agency. The loan recipient shall retain all project records and documents for inspection and audit purposes for a period of three years from the date of the final loan payment.

ITEM 8. Amend renumbered subrule 93.5(10) as follows:

93.5(10) Interest rate and fees. The loan interest rate and loan fees shall be established annually in the ~~IUP~~ Clean Water State Revolving Fund Intended Use Plan. The loan interest rate is not to exceed the prevalent interest rate ~~and~~. The establishment of loan fees will take into account the administration cost of the livestock water quality facilities set-aside.

ITEM 9. Amend subrule **93.6(1)**, paragraph “c,” as follows:

c. Applicant eligibility. Assistance is available to any person who owns land that needs local water protection projects installed to control runoff of sediments, nutrients, pesticides or other nonpoint source pollutants into waters of the state. Loans will be made only to persons who are owners of record of the property where the local water protection projects are to be in-stalled. Assistance is limited to livestock producers operating animal feeding operations that are eligible to receive assistance from the state revolving fund according to current federal laws and regulations.

NOTE: Current federal laws and rules as of ~~August 2005~~ February 2007 do not allow assistance for concentrated animal feeding operations required to have a National Pollution Discharge Elimination System permit or assistance for animal feeding operations that will become concentrated animal feeding operations required to have a National Pollution Discharge Elimination System permit as a result of the project.

These amendments are intended to implement Iowa Code sections 17A.3(1)“b,” 455B.105, 455B.291, and 455B.297.

Richard A. Leopold, Director

Date